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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR part 547

RIN 3141-AA27

Minimum Technical Standards for Class II Gaming Systems and Equipment

AGENCY: National Indian Gaming Commission

ACTION: Notice of Proposed Rulemaking.

SUMMARY: On September 21, 2012, the National Indian Gaming Commission (“NIGC”) published a final rule amending its technical standards for Class II gaming systems and equipment, and the rule became effective on October 22, 2012. This document proposes an amendment to the regulatory text of the final rule to harmonize the charitable gaming exemptions in the Technical Standards and the Class II Minimum Internal Control Standards of NIGC regulations.

DATE: Submit comments on or before [INSERT DATE 45 DAYS FROM DATE OF PUBLICATION].

ADDRESSES: You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- *Email comments to:* reg.review@nigc.gov.
- *Mail comments to:* National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Hand deliver comments to:* 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Fax comments to:* National Indian Gaming Commission at 202–632–0045.

FOR FURTHER INFORMATION CONTACT: Michael Hoenig, Senior Attorney, National Indian Gaming Commission, 1441 L Street NW, Suite 9100 Washington, DC 20005.

Telephone: 202-632-7009; email: reg.review@nigc.gov

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested parties are invited to participate in this Notice of Proposed Rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

II. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100-497, 25 U.S.C. 2701 et seq., was signed into law on October 17, 1988. The Act establishes the NIGC and sets out a comprehensive framework for the regulation of gaming on Indian lands. On September 21, 2012, the NIGC published a final rule in the Federal Register called Minimum Technical Standards for Class II Gaming Systems and Equipment. 77 FR 58473. The standards are designed to assist tribal gaming regulatory authorities and operators with ensuring the integrity and security of Class II gaming, the accountability of Class II gaming revenue, and provide guidance to equipment manufacturers and distributors of Class II gaming systems.

On November 18, 2010, the NIGC issued a Notice of Inquiry and Notice of Consultation advising the public that the NIGC has endeavored to conduct a comprehensive review of its regulations and requesting public comment on which were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. 75 FR 70680. On April 4, 2011, after consulting with tribes

and reviewing all comments, the NIGC published a Notice of Regulatory Review Schedule (NRR) setting out a consultation schedule and process for review. 76 FR 18457. Part 547 was included in the third regulatory group reviewed pursuant to the NRR.

Section 547.5(e)(5) of the final rule states that the Part does not apply to a charitable gaming operation provided that, among other things, the amount of gross gaming revenue of the charitable gaming operation does not exceed \$1,000,000. This Notice of Proposed Rulemaking proposes to amend § 547.5(e)(5) to change that amount from \$1,000,000 to \$3,000,000.

At the same time the NIGC published the Minimum Technical Standards, it published Minimum Internal Control Standards for Class II Gaming (MICS). 77 FR 58707. Like the Technical Standards, the MICS exempt charitable gaming operations that earn less than a set threshold amount. The Commission increased that amount in the MICS from \$1,000,000 to \$3,000,000.

The Commission proposes to amend § 547.5(e)(5) of the Technical Standards to harmonize the charitable gaming exemptions in the Technical Standards and MICS and ensure that the exemption for a “charitable gaming operation” is consistent throughout the NIGC’s regulations.

III. Regulatory Matters

Regulatory Flexibility Act

The proposed rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act. Small Business Regulatory Enforcement Fairness Act The proposed rule is not a major rule

under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of § 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in 25 C.F.R. Part 547 were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 et seq. and assigned OMB Control Number 3141-0007.

IV. List of Subjects

25 CFR Part 547

Gambling; Indian – Indian lands; Indian – tribal government

For the reasons set forth in the preamble, the Commission proposes to revise 25 CFR Part 547 as follows:

PART 547 – MINIMUM TECHNICAL STANDARDS FOR CLASS II GAMING SYSTEMS AND EQUIPMENT

1. The authority citation for Part 547 continues to read as follows:

Authority: 25 U.S.C. 2706(b).

2. In § 547.5 paragraph (e)(5) is revised to read as follows:

§ 547.5 How does a tribal government, TGRA, or tribal gaming operation comply with this part?

(e) ***

(5) The annual gross gaming revenue of the charitable gaming operation does not exceed \$3,000,000.

Tracie L. Stevens,
Chairwoman

Daniel J. Little,
Associate Commissioner

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